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AUG 03 2006

PATENT APPLN. NO. 10/762,530  
RESPONSE UNDER 37 C.F.R. §1.111

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REMARKS

Withdrawn claims 7 and 8 have been canceled without prejudice to the filing of a divisional application directed thereto under 35 U.S.C. § 120 and 35 U.S.C. § 121.

Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Tachikawa et al., US 2005/0119620A1, (hereinafter: "Tachikawa").

Removal of this rejection is in order because Tachikawa is not a proper reference against the present application under 35 U.S.C. 102(e). The Tachikawa international application, PCT/JP02/13531, was not published in the English language and, therefore, Tachikawa is not prior art under 35 U.S.C. 102(e) as of its international filing date.

Applicants note that the Tachikawa international application was published as WO 03/057284 on July 17, 2003, which is prior to the U.S. filing date of the present application. However, the filing date of applicants' prior Japanese application, JP 2003-019401, the priority of which is claimed in the present application, is January 28, 2003. An English translation of the priority application and a translator's statement were submitted to the Office on January 23, 2004, to perfect applicants' claim to

priority. Therefore, WO 03/057284 is also not a proper reference against the claims of the present application.

Moreover, Tachikawa fails to support a case of anticipation of claims 1 and 3 under 35 U.S.C. 102.

The Office states in the paragraph bridging pages 2 and 3 of the Action that the barrel of Tachikawa "has a multilayer structure [0054] in which an innermost and an outermost layer is sandwiched by the innermost layer and the outermost layer and is composed of at least one layer made of a resin excelling in a barrier property, and further wherein the intermediate layer is formed up to a vicinity of a surface of the tip of the luer tip, and is not formed in a direction of the proximal end of the barrel from a proximal end of an initial insertion of the gasket inserted in the barrel (fig 1)."

However, Tachikawa does not disclose a multi-layer barrel (outer tube) including the limitations as claimed in the present invention. The Office has not identified any disclosure in Tachikawa that describes a multi-layer barrel structure. It is clear from Fig. 1 of Tachikawa that the outer tube 2 of the syringe disclosed therein is not a multi-layer structure. Furthermore, the materials usable for the outer tube identified in paragraph [0054] in Tachikawa are not resins excelling in a barrier property as

required by claims 1 and 3. Therefore, Tachikawa fails to disclose each and every element of the present application and the Office has not supported a case of anticipation of claims 1 and 3.

The Office also notes that portions of the claims appear to be product-by-process limitations and that product-by-process claims are not limited to the recited steps.

The Office does not identify the portions of the claims believed to be "product-by-process". If the Office is referring to the expression "formed up to" in claims 1 and 3, such expression is a structural limitation that identifies the location of the end of the intermediate layer in the cylindrical wall portion of the barrel.

Removal of the rejection of the claims is believed to be in order and is respectfully requested. Issuance of a Notice of Allowability and Notice of Allowance is also believed to be in order and is respectfully requested.

The foregoing is believed to be a complete and proper response to the Office Action dated May 5, 2006, and is believed to place this application in condition for allowance. If, however, minor issues remain that can be resolved by means of a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number indicated below.

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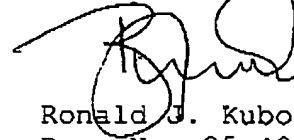
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In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

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